

NOTICE:

**PORTIONS OF THE FOLLOWING
DOCUMENT ARE ILLEGIBLE**

The Administrative Record Staff

STATEMENT OF FACTS

The following statement of facts and conclusions of law are considered by EPA to be the basis for this Agreement. Nothing in this Agreement shall be considered an admission by any party with respect to any unrelated claims by a party or with respect to any claims or actions by persons not a party to this agreement, except in an action to enforce the terms of this Agreement.

1. EPA issued NPDES Permit Number CO-0001333 to DOE on November 26, 1984, authorizing wastewater discharges from the RFP. The permit set forth, inter alia, general and specific conditions, including effluent limits and monitoring requirements for each discharge point. The permit requires that there "be no discharge from outfall 001 except when weather conditions (precipitation, snow melt, and/or extreme low temperatures) result in flow into Pond B-3 greater than can be handled by temporary storage in Pond B-3 and spray irrigation done in accordance with good engineering practices with the existing facilities."

2. Discharge Monitoring Reports ("DMRs") submitted by DOE for the months of February 1988 through May 1988 indicate that effluent limits for outfall 001 were exceeded. Attachment A, appended and incorporated by this reference, describes these permit violations.

3. On August 9, 1988, EPA issued a Notice of Violation to DOE for the violations described in paragraph 2, requiring DOE to submit, on or before September 9, 1988, either:

a. written certification that the violations have been corrected and compliance can be maintained; or

b. a remedial action plan and schedule containing:

1. a description of any noncompliance situation;

2. identification of corrective actions to be taken including estimated costs;

3. a schedule for obtaining the funds required to implement corrective actions;

4. periodic progress reports; and
5. projected completion date.

4. On September 12, 1988, DOE responded by describing the activities it had undertaken, including a schedule for the installation of dechlorination facilities and for evaluating the sludge handling facilities. EPA determined that this response was inadequate to address the remedial action plan requirements, and that DOE did not certify compliance with its permit.

5. By letter of February 10, 1989, DOE provided EPA a progress report detailing the current status of the activities it had undertaken to address the compliance problems outlined in the August 9, 1988 Notice of Violation. In addition, DOE requested that the NPDES compliance discharge point (i.e., outfall 001) be changed from the B-3 Pond to the Sewage Treatment Plant (STP) in order to more accurately reflect the Biological Oxygen Demand (BOD) levels being measured. In subsequent telephone conversations between EPA and DOE, it was agreed that effluent monitoring would occur at both points and that compliance would be determined at the sewage treatment plant.

6. By telephone on March 1, 1989, DOE reported a discharge of chromic acid (a hazardous substance) into its treatment facility that discharges through outfall 001. The event began February 22, 1989, and ended February 28, 1989. During this time, the effluent from the sewage treatment plant was applied by spray irrigation which resulted in run-off to the B-5 and C-2 ponds. Data subsequently supplied by DOE indicated elevated levels in the pond waters. The permit authorizes Pond B-5 discharges through outfall 006 and Pond C-2 discharges through outfall 007. At the request of DOE, EPA, by letter of April 12, 1989, granted one-time permission to DOE to bypass outfall 006 and discharge the contents of pond B-5 to Upper Church Ditch. The permission to bypass expired on May 26, 1989.

7. On March 16, 1989, EPA met with representatives of DOE and Rockwell to discuss the requested permit changes, permit violations, and the chromic acid event. In that meeting, all parties agreed that a formal NPDES Federal Facility Compliance Agreement would be the

appropriate means to address the issues. On April 10, 1989, EPA issued a proposed Compliance Agreement to DOE for the RFP.

8. On June 27, 1989, EPA and DOE met to revise the proposed NPDES Federal Facility Compliance Agreement for the RFP, NPDES Permit No. CO-0001333. On July 18, 1989, a revised Agreement was sent by EPA to DOE. DOE did not execute this revised Compliance Agreement.

NOW, THEREFORE IT IS AGREED THAT:

I. EFFLUENT LIMITATIONS

A. Beginning no later than April 1, 1991, all effluent limitations for outfall 001, except total residual chlorine and nitrates, shall apply at the point of discharge from the STP, instead of at the discharge from Pond B-3. The limits for BOD5 shall be replaced with limits for carbonaceous BOD5 (CBOD5) with the same numerical limits. These limitations shall apply at all times, even if the effluent is spray irrigated. The limitations for total residual chlorine (TRC) and nitrates shall apply to the discharge from Pond B-3 and Pond B-5.

B. Effective immediately, the discharge from outfalls 005, 006 and 007 shall not exceed 50 µg/l total chromium in any sample.

C. Beginning no later than July 30, 1990, good engineering practice for spray irrigation shall be conducted in a manner to prevent surface water runoff from the site of application: such irrigation shall not occur during freezing conditions or when the ground surface is unable to absorb the application.

II EFFLUENT MONITORING

A. OUTFALL 001

1. Beginning no later than June 30, 1990, the effluent from the STP shall be monitored for all of the parameters listed for outfall 001 on page 6 of the permit. The monitoring frequency for CBOD₅, total suspended solids, and fecal coliform bacteria shall be at least two times per week. The frequency for the other parameters shall be the same as given on page 6 of the permit. Composite samples shall be collected for all parameters except for pH, fecal coliform, TRC, and oil and grease.

2. Beginning no later than June 30, 1990, the effluent from the STP shall be monitored for volatiles per Table II of Appendix D, 40 C.F.R. 122, and metals contained in the Hazardous Substances List (HSL) per 40 C.F.R. §302.4. The monitoring frequency shall be monthly and the sample type shall be composite from the HSL metals and grab for volatiles.

3. Beginning no later than June 30, 1990, in addition to the monitoring at the STP, authorized discharges from Pond B-3 shall be monitored during all discharge events for CBOD₅, BOD₅, total suspended solids, total residual chlorine and nitrate. Either grab samples or composite samples may be collected. Samples of the discharge from Pond B-3 shall be collected after 10:00 a.m. (Note: This is to provide an opportunity for some stirring of sediments to occur within the pond.)

B. WHOLE EFFLUENT TOXICITY

1. By September 30, 1990, DOE shall analyze final effluent samples from the STP and A-4, B-5, and C-2 pond discharges for acute toxicity. Sampling shall be monthly for six consecutive months and quarterly thereafter until the date that the renewal NPDES permit becomes effective. The sample type shall be a flow proportioned composite.

2. DOE shall conduct acute 48-hour replacement static tests using Ceriodaphnia sp. and acute 96-hour replacement static tests using fathead minnows (Pimephales promelas) five days (plus or minus two days) of age.

3. The acute replacement static toxicity tests shall be conducted in conformity with procedures outlined in the latest edition of "Methods for Measuring the Acute Toxicity of Effluent to Freshwater and Marine Organisms." EPA/600/4-85/013 (Revised March 1985) and the "Region VIII EPA NPDES Acute Test Conditions - Static Renewal Whole Effluent Toxicity." Procedures may be supplemented and, in case of conflict, shall be superceded by EPA Region VIII procedures.

III. COMPLIANCE PLAN

A. DOE shall prepare a compliance plan (CP) describing those actions necessary to maintain compliance with the terms and conditions of NPDES Permit Number CO-0001333, pursuant to Section 1-601 of Executive Order 12088. The compliance plan is to be submitted to EPA no later than July 30, 1990 and provide, at a minimum, the following:

1. a plan to conduct both a complete diagnostic evaluation of the STP in relation to effluent noncompliance issues and to identify the performance limiting factors for the appropriate facilities within the STP in relation to effluent noncompliance issues;
2. identification of action to be taken in response to 1, above. The actions to be taken will include, at a minimum, the following:
 - a. upgrades to the STP instrumentation (i.e. for effluents and automated chlorination),
 - b. upgrades to the STP sludge drying beds,
 - c. development of containment procedures for both STP influents and effluents;
3. a schedule for implementing the required actions; and
4. periodic progress reports per V.C of this Agreement.

B. No later than November 15, 1990, DOE shall submit a plan and implementation schedule, addressing, as necessary, the findings of the "Report of the Chromic Acid Incident Investigation at Rocky Flats - February 22, 1989," specifically Sections 5.4 (Judgment of Needs) and 5.5 (Other Areas of Concern).

IV. SLUDGE TREATMENT, STORAGE AND DISPOSAL

A. DOE shall provide for proper treatment, storage, and disposal of all sludges produced by its wastewater treatment system and comply with all applicable local, state and federal regulations and standards concerning sludge disposal.

B. DOE shall provide verification of the construction of all sludge drying beds, including construction plans and specifications.

C. Due to the history of usage of the unlined beds, a groundwater monitoring plan, including an implementation schedule, shall be submitted to EPA for review and approval no later than July 30, 1990. Upon written approval of the plan by EPA, DOE shall commence implementation of the plan.

V. REPORTING REQUIREMENTS

A. EFFLUENT MONITORING

All data collected pursuant to Section II shall be submitted with the Discharge Monitoring Report (DMR) for that month unless instructed specifically below to do otherwise.

B. WHOLE EFFLUENT TOXICITY

1. Monthly acute static replacement test results shall be submitted with the DMR for that month.

2. Upon the initiation of quarterly sampling, the test results shall be submitted with the DMR for the last month of the calendar quarter per the following table:

<u>Quarter</u>	<u>Reporting Due Dates</u>
January-March	April 28
April-June	July 28
July-September	October 28
October-December	January 28

The format for the report shall be consistent with the June 23, 1988 Region VIII Guidance for Acute Whole Effluent Reporting, or its latest revision, and shall include all chemical and physical data as specified for the test.

C. PROGRESS REPORTS

1. DOE shall submit quarterly progress reports with the DMR for the last month of the calendar quarter on the actions taken in response to Section III and IV of this Order directly to EPA Region VIII, with an information copy to the Colorado Department of Health (CDH), pursuant to the following schedule:

<u>Provide Progress Status (as of)</u>	<u>Transmittal of Progress Report no later than</u>
July 1, 1990	July 28, 1990
October 1, 1990	October 28, 1990
January 1, 1991	January 28, 1991
April 1, 1991	April 29, 1991

(Note: Progress reports shall continue to be submitted at quarterly intervals until superseded by the renewed NPDES permit.)

2. The progress reports shall indicate compliance or noncompliance with the plans described in Section III and IV of this Agreement. In the event of noncompliance, the report shall include the cause of noncompliance and any remedial actions taken. If delay is anticipated in meeting any schedule date, DOE shall immediately notify EPA, Region VIII, in writing of the anticipated delay, and include the following information:

- a. the precise cause of the delay;
- b. the actions taken or to be taken to prevent or minimize the delay; and
- c. the time table by which the measures shall be implemented.

3. All reports shall be sent to:

Compliance Branch Chief, 8WM-C
Water Management Division
EPA, Region VIII
999 18th Street, Suite 500
Denver, Colorado 80202-2405

VI. GENERAL PROVISIONS

A. This Compliance Agreement does not constitute a waiver or modification (except as specifically described herein) of the terms and conditions of NPDES Permit No. CO-0001333, which terms and conditions remain in full force and effect.

B. DOE has provided written notice to EPA no later than May 15, 1990, identifying the management and operating contractor of the RFP.

C. The terms and conditions of NPDES Permit No. CO-0001333, and of this Compliance Agreement, shall apply to and be binding upon the permittee. DOE shall give written notice of this Compliance Agreement to the operator of the RFP and notify EPA that such notice has been given. DOE shall provide written notice to EPA at least thirty (30) days prior to any change of operator at the RFP.

D. DOE shall give written notice of this Compliance Agreement to any successor agency or operator at least thirty (30) days prior to a change at the RFP; shall simultaneously notify EPA that such notice has been given; and shall concurrently provide a copy of this Compliance Agreement to any successor agency or operator.

VII. FUNDING

A. It is the expectation of the parties that all obligations and commitments of DOE established by this Agreement will be fully funded by DOE. However, no provisions herein shall be interpreted to require the obligation of payment of funds in violation of the Anti-

Deficiency Act 31 U.S.C. §1341.

B. In the event that DOE is unable to fulfill its obligations and commitments established by this Agreement due to the unavailability of appropriated funds, the parties shall attempt to agree upon appropriate adjustments to the dates which require payment of such funds; if the parties are unable to agree upon appropriate adjustments, EPA reserves the right to terminate its participation in this Agreement. Upon termination of participation pursuant to this Section, EPA reserves any rights it may have to address the alleged violations that are the subject of this Agreement through any other available means.

VIII. FORCE MAJEURE

A. If DOE determines that it will be unable to comply with any of the provisions of this Agreement due to a "force majeure" event, DOE shall promptly notify EPA in writing within ten (10) days of its first knowledge of the delay. DOE shall state the nature, cause, and anticipated length of the delay, and all steps taken and a schedule for implementation to avoid or minimize a "force majeure" event. If EPA agrees that the event is subject to Force Majeure, time for performance of the provision may be extended for a period of time equal to the length of the delay resulting from the event.

B. For purposes of this Agreement, a "force majeure" event is defined as an event, the circumstances of which are beyond the control of DOE, that could not have been prevented by due diligence, including but not limited to any delay caused solely by EPA or any delay caused by the unavailability of appropriated funds.

C. If the parties do not agree that the delay was caused by a "force majeure" event, or are unable to agree on the extent of delay, this matter shall be resolved pursuant to Section IX of this Agreement. In submitting the matter in accordance with Section IX, DOE shall have the burden of providing that the delay was attributable to a "force majeure" event, that it exercised due diligence in minimizing the delay, and that an extension period of compliance is warranted.

IX. CONFLICT RESOLUTION

In the event of any conflict involving violations of this Agreement, EPA Region VIII and DOE shall meet promptly and shall work in good faith for a period of not less than thirty (30) days in an effort to reach a mutually agreeable resolution of the dispute. If the differences cannot be resolved by the two parties in a timely manner, a proposed Order or Compliance Agreement may be issued by EPA as appropriate, and the escalation procedures in Section 1-602, 1-603, and 1-604 of Executive Order 12088 shall apply. Additional dispute resolution procedures may also be utilized if mutually agreed by parties.

X. ENFORCEMENT REMEDIES

A. EPA will employ all available enforcement measures should DOE not comply with this Agreement. DOE recognizes its obligations to comply with the Clean Water Act and NPDES Permit Number CO-0001333, issued pursuant to the Act, and will so inform the RFP operator of its duties and obligations.

B. Upon the effective date of this Agreement, and during its term, the parties agree that so long as DOE is in full compliance with the terms of this Agreement, it shall operate in lieu of any administrative, legal and equitable remedies available to EPA against DOE with respect to the activities covered by this Agreement.

C. The provisions of this Agreement, including those related to statutory requirements, regulations, permits, or compliance, are enforceable as citizens' suits pursuant to Section 505 of the Act, including actions or suits by the State and its agencies. The parties agree that the State and its political subdivisions are "citizens" within the meaning of Section 505 of the Act.

XI. MODIFICATION OF AGREEMENT

Either party may request a written modification of this Agreement. If approved by both parties, this Agreement shall be amended to incorporate the approved modification.

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XII. DURATION OF AGREEMENT


EPA and DOE shall adhere to the terms of this Agreement so long as it remains in effect. This Agreement will continue in effect until superseded by the renewed NPDES permit. It is recognized, however, that the implementation and reporting requirements established herein and not included in the permit shall continue.

XIII. EFFECTIVE DATE

This Agreement shall become effective on the date by which both Parties have signed this Agreement.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

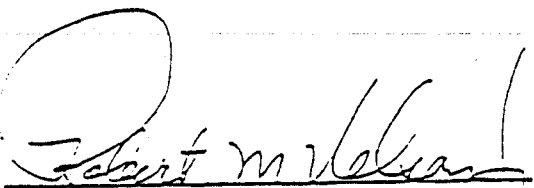
3-25-91
DATE



James J. Scherer
Regional Administrator
Region VIII

UNITED STATES DEPARTMENT OF ENERGY

3/19/91
DATE



Robert M. Nelson, Jr.
Manager, Rocky Flats Office
U.S. Department of Energy

Attachment A

Table 1

SUMMARY OF VIOLATIONS
 U.S. Department of Energy
 Rocky Flats Plant
 CO-0001333

Parameter	Reporting Period	Permit Limits		Reported Results	
		30-day Avg.	Daily Max.	30-Day Avg.	Daily Max.
BOD5 - mg/l		10 a/	25 b/		
	Feb. 1988			11	--
	Mar. 1988			21.3	28.5
	Apr. 1988			<27	<40
	May 1988			11	--
		30-day Avg.	7-day Avg.	30-Day Avg.	7-Day Avg.
Fecal Coliform No./100mi		200 c/	400 c/		
	Apr. 1988			312	--

- a/ This limitation shall be determined by the arithmetic mean of a minimum of three (3) consecutive samples taken during separate weeks in a 30 day period.
- b/ Any single analysis and/or measurement beyond this limitation shall be considered a violation of the conditions of this permit.
- c/ Averages for Fecal Coliform shall be determined by the geometric mean of minimum of three (3) consecutive grab samples taken during separate weeks in a 30-day period for the 30-day average, and during separate days in a period for the 7-day average (minimum total of three (3) samples).